

420 CMR 2.00 Expedited Permitting

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2.01: Purpose

XXX CMR 20.00 *et seq.* establishes rules, standards and procedures for the Expedited Permitting Program created in Chapter 43D. The Executive Office of Economic Development (the "Office") is the regulatory agency for the program and is authorized to issue regulations to explain and to implement its operation.

2.02: Program Overview

The Expedited Permitting Program gives cities and towns the ability to promote commercial development on pre-approved parcels by offering expedited local permitting on those parcels. Such development shall be primarily commercial however mixed-use properties shall also qualify for priority designation so long as they conform to the statutory requirements for a priority development site. The program is at local option.

Cities and towns that choose to adopt the provision of Chapter 43D will be eligible for a one-time technical assistance grant to assist the municipality to improve and streamline the local permitting process for commercial development.

2.03: Definitions

"Division", the Division of Administrative Law Appeals.

"Governing body", in a city having a Plan D or Plan E charter the city manager and the city council and in any other city the mayor and city council, and in towns the board of selectmen.

"Interagency permitting board", the board, as described in Section 62 of Chapter 23A established to review and approve or deny municipal priority development site proposals

and to grant and administer technical assistance grants. The members of the board shall be comprised of the state permit ombudsman who will serve as the chair, the secretary of economic development, the secretary of transportation, the secretary of environmental affairs, the secretary of public safety, the director of the department of housing and community development, the director of the department of business and technology, the director of the department of workforce development, the director of the department of consumer affairs and business regulation, the chair of the commonwealth development coordinating council, and the executive director of the Massachusetts Development Finance Agency, or their designees. Six members shall be a quorum for the transaction of business. At the direction of the chair, the board shall meet no less than 8 times a year, and shall monitor the development of priority development sites as provided for in Chapter 43D and investigate ways in which to expedite priority development site projects. The board shall evaluate state agency permit procedures and recommend changes for improved efficiency. The board shall administer the technical assistance grants program established in Section 3(b) of Chapter 43D.

“Issuing authority”, a local board, commission, department or other municipal entity that is responsible for issuing permits, granting approvals or otherwise involved in land use development including redevelopment of existing buildings and structures.

“Mixed Use”, use of a parcel of real property for both residential and commercial purposes.

“Permit”, a permit formal determination, order of conditions, license, certificate, authorization, registration, plan approval, zoning relief or other approval or determination with respect to the use or development of land, buildings, or structures required by any issuing authority including but not limited to those under statutory authorities contained in Sections 81A to 81J, inclusive, of Chapter 40A, and Sections 81X to 81GG, inclusive, of Chapter 41, Sections 40 and 40A of Chapter 131, Sections 26 to 32, inclusive, of Chapter 111, Chapter 40C, Sections 13 and 14 of Chapter 148, Chapter 772 of the acts of 1975, or otherwise under state law or local by-law or ordinance, and all associated regulations, by-laws and rules, but not including building permits or approvals pursuant to Sections 81O to 81W, inclusive, of Chapter 41. “Permit” shall not include the decision of an agency to dispose of property under its management or control; predevelopment reviews conducted by the municipality or a technical review team; or permits granted by the Massachusetts Water Resources Authority.

“Priority development site”, PDS, a privately or publicly owned property that is: (1) commercially or industrially zoned; (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site.

“Secretary”, the secretary of the executive office of economic development.

“Technical review team”, an informal working group consisting of representatives of the various issuing authorities designed by the head of their issuing authority to review requests submitted under this chapter. The technical review team shall not include members of the zoning board of appeals.

2.04: PDS Designation Process

To apply for PDS designation, municipalities must select a parcel that meets PDS criteria defined by Chapter 43D. A town must vote to approve participation in Chapter 43D by town meeting or a city must approve participation in Chapter 43D by a two thirds vote of city council members. In order to qualify for PDS designation, express permission of the property owner must be granted. Once local approval has been granted, the governing body must apply to the board for PDS designation. The application shall include: (1) a detailed description of the property; (2) good faith commitment to comply with Chapter 43D; (3) written authorization of the property owner; and (4) at the discretion of the governing body, a request for technical assistance. The board will review the application to determine whether the parcel meets all applicable requirements. The board shall have 60 calendar days from receipt of the PDS application to issue a decision.

PDS designation shall apply for a term no less than five years, beginning after the initial 120 calendar day phase-in period is complete. The governing body may decide to terminate PDS designation on a parcel after the initial five year term by providing timely written notice to the board. Absent a termination notice from the governing body, PDS designation shall remain in effect after the initial five year term.

2.05: Grant Application Process

All Technical Assistance Grants under Chapter 43D are subject to legislative appropriation. All grant requests for technical assistance shall include a detailed description of how the grant will be used and shall be submitted to the board with the application for PDS designation. Grants shall be used to implement the requirements of Chapter 43D, which shall include but not be limited to, professional staffing assistance, local government reorganization, and consulting services.

The board shall review applications for technical assistance grants, and issue a final decision within 60 calendar days of receipt.

The grants are to be considered one-time grants. In special circumstances where a specific and originally unforeseen need can be demonstrated, the governing body may be eligible for an additional technical assistance grant if approved by the board and the secretary, provided the governing body has previously identified and successfully permitted at least one PDS prior to the second request for technical assistance grant money.

2.06: Local Adoption

A governing body shall adopt the provisions of Chapter 43D by endorsing the check for a technical assistance grant. In the cases where technical assistance has not been requested

or granted, the governing body may adopt the provisions of Chapter 43D by completing a notarized form provided to them by the board.

Beginning on the day a governing body adopts the provisions of Chapter 43D, the governing body will have 120 calendar days to conform to the requirements of this program.

These requirements shall be to:

- (a) appoint a single point of contact to serve as the primary municipal liaison for all issues relating to Chapter 43D;
- (b) amend rules and regulations on permit issuance to conform to Chapter 43D;
- (c) along with the issuing authority, collect and ensure the availability of all governing statutes, local ordinances, by-laws, regulations, procedures and protocols pertaining to each permit;
- (d) establish a procedure whereby the governing body shall determine all permits, reviews and predevelopment reviews required for a project; all required scoping sessions, public comment periods and public hearings; and all additional specific applications and supplemental information required for review, including, where applicable, the identification of potential conflicts of jurisdiction or substantive standards with abutting municipalities and a procedure for notifying the applicant;
- (e) establish a procedure, following the notification of the required submissions, for determining if all the materials required for the review of the project have been completed; and
- (f) establish a procedure to allow for all local permitting decisions for PDS projects to be issued within 180 calendar days.

Nothing in Chapter 43D shall be construed to alter the jurisdiction of issuing authorities.

2.07: Applications and Completeness Review

The governing body must provide an applicant with a comprehensive packet of permit applications necessary for the PDS project. Once the applicant has submitted an application packet, the governing body has 20 business days to determine completeness of the applications. The governing body shall timely notice the applicant by certified mail as to the completeness of the applications. Timing of the 180 calendar day review period shall commence the day after notice was mailed.

Should the governing body determine an application is incomplete, the governing body must timely notify the applicant in writing by certified mail with an explanation as to why the application is incomplete, and request the information necessary to complete the application. The resubmission of an application package will begin a new 30 calendar day completeness review period. Subsequent completeness decisions must be sent by certified mail and conform to the process outlined in this section.

2.08: Permitting Process and Extensions

Beginning the day after the certified notice of completeness was sent, the governing body has 180 calendar days to complete the local permitting process. This period may be

waived or extended for good cause upon written request of the applicant with the consent of the governing body, or upon written request of the issuing authority with the consent of the applicant.

The 180 calendar day period may be extended at the written request of the governing body, if a previously unidentified permit or review has been determined necessary within the first 150 calendar days of the process. When a governing body determines that a previously unidentified permit is necessary, the governing body must send immediate notice of the additional requirements to the applicant by way of certified mail and copy the board. The governing body may exercise the extension for a maximum of 30 calendar days.

The 180 calendar day period may be extended when an issuing authority determines that (1) action by another federal, state or municipal government agency is required before the issuing authority may act; (2) judicial proceedings affect the ability of the issuing authority or applicant to proceed with the application; or (3) enforcement proceedings that could result in revocation of an existing permit for that facility or activity and denial of the application have been commenced. In those circumstances, the issuing authority shall provide written notification to the secretary and the board. When the reason for the extension is no longer applicable, the issuing authority shall immediately notify the applicant, the secretary, and the board, and shall complete its decision within the time period specified in this section, beginning the day after the notice to resume is issued by the governing body.

2.09 Permit Modifications

Issuing authorities shall make every reasonable effort to review permit modification requests within as short a period as is feasible to maintain the integrity of the expedited permitting process. An issuing authority shall inform an applicant within 20 business days of receipt of a request whether the modification is approved, denied, determined to be substantial or additional information is required by the issuing authority in order to issue a decision. If additional information is required, the issuing authority shall inform an applicant within 20 business days after receipt of the required additional information whether the modification is approved or denied or that further additional information is required by the issuing authority in order to render a decision.

2.10: Automatic Grant of Approval

Failure by any issuing authority to take final action on a permit or approval within the 180 calendar-day period, or properly extended review period, shall be considered a grant of the relief requested of that authority. In such case, within 14 days after the date of expiration of the time period, the applicant shall file an affidavit with the city or town clerk, attaching the application, setting forth the facts giving rise to the grant and stating that notice of the grant has been mailed, by certified mail, to all parties to the proceedings and all persons entitled to notice of hearing in connection with the application.

An issuing authority may not use lack of time for review as a basis for denial of a permit if the applicant has provided a complete application and met all other obligations in accordance with this chapter.

The automatic grant of approval shall not occur where the governing body has made a timely determination that the application packet is not complete and has notified the applicant within 20 business days, but the applicant does not provide the requested information within 90 calendar days. In this case, the governing body must provide written notice of the discontinuation of process to the board.

The automatic grant of approval shall not apply where the governing body has determined that substantial modifications to the project render the issuing authority incapable of making a decision on an application. In such cases, an extension of the 180 calendar day period may be granted by the board for demonstrated good cause at the written request of the issuing authority. The issuing authority shall provide terms for the extension including the number of additional days requested. Within ten business days, the board shall respond to the issuing authority with an extension determination.

In cases where the applicant changes the specifications of a project for the purpose of public benefit, the issuing authority may submit a written request for an extension to the board, and shall make every reasonable effort to expedite the processing of that permit application.

2.11: False or Misleading Applications

The automatic grant of approval shall not occur where the governing body has determined that a final application has contained false or misleading information. If at any time the governing body determines that an application contains false or misleading information, the governing body must issue a statement of findings and submit it to the board by certified mail as a matter of public record and copy the applicant by certified mail. Findings of false or misleading applications may be appealed in Land Court on a motion of the applicant. Pending a court's ruling, the 180 calendar day review period shall be tolled. If a court rules in favor of the appellant, the 180 calendar day review shall resume. If the court rules in favor of the governing body, the 180 day process shall be waived.

2.12: Application to Cape Cod Commission & Martha's Vineyard Commission

In municipalities where the Cape Cod Commission or Martha's Vineyard Commission have the authority to review permit applications, the 180 day time period will be tolled on the day the referral is made to the Cape Cod Commission and the Martha's Vineyard Commission until those bodies complete their review. When the permit applications return to the municipal process, the 180 day time period will continue and all applicable rules and regulations shall apply.

2.13: Appeals

Appeals of an issuing authority decision or from an automatic grant of approval shall be filed within 20 calendar days after the last individual permitting decision has been

rendered or within 20 calendar days after the conclusion of the 180 day period, whichever is later. The 180 day period shall be increased by the number of days in any extension granted under this chapter.

A person aggrieved by a final decision of any issuing authority, or by the failure of that authority to take final action concerning the application within the time specified, whether or not previously a party to the proceeding, or any governmental officer, board, or agency, may appeal to the Division by bringing an action within 20 calendar days after a written decision was or should have been rendered. Appeals from decisions of multiple permitting authorities shall be filed simultaneously and shall be consolidated for purposes of hearing and decision. This section shall not apply to appeals pursuant to Sections 40 and 40A of Chapter 131, which shall continue to be appealed in accordance with said Chapter 131, Chapter 30A and applicable regulations.

When hearing appeals under this chapter, the Division shall revise its rules, procedures and regulations to the extent necessary to accord with the requirements of Chapter 43D. The division shall render a final written decision within 90 days of the receipt of the appeal. Thereafter, an aggrieved party may appeal to the superior court department by bringing an action within 20 days after the Division has rendered a final decision.

An aggrieved person may otherwise appeal to the Land Court in accordance with Section 3A of Chapter 185, by bringing action within 20 days after a written decision was or should have been rendered.

2.14 Permit Transfers and Renewals

Permits shall not transfer automatically to successors in title, unless the permit expressly allows the transfer without the approval of the issuing authority.

Issuing authorities having substantive jurisdiction over permit issuance may develop procedures for simplified permit renewals and annual reporting requirements. If the procedures are not developed, renewals of permits shall be governed by the same procedures and timelines as specified in conjunction with this chapter.

Permits issued pursuant to Chapter 43D shall expire 5 years from the date of the expiration of the applicable appeal period unless exercised sooner. Where permits cover multiple buildings, commencement and continuation of construction of 1 building shall preserve the permit validity. Changes in the law subsequent to the issuance of permits based upon the priority proposal shall not invalidate the permits or review certificates. Nothing in this section shall limit the effectiveness of Section 6 of Chapter 40A.

2.15: Municipal Benefits

Municipalities that adopt the provisions of Chapter 43D are eligible for priority consideration for state grants, including but not limited to, community development action grants, public works economic development grants, brownfields remediation grants, and other state resources such as quasi-public financing and training programs.

The Commonwealth, through the Office of Business Development and a contract with the Massachusetts Alliance for Economic Development, shall promote PDS to the real estate and business community nationwide.

2.16: State Permitting

Reviews required under the Massachusetts Environmental Protection Act, Sections 61 to 62H, inclusive, of Chapter 30, or the Massachusetts Historical Commission, Sections 26 to 27C, inclusive, of Chapter 9, shall conclude within 120 calendar days of a state determination of completeness of required review materials, as established by the executive office of environmental affairs in consultation with the state secretary. The aforementioned reviews shall take place concurrently with the 180 calendar day municipal permitting review process. The secretary of environmental affairs and the state secretary shall establish time frames for all required filings and additional filings by the applicant in order to comply with this section. In the event an applicant fails to comply with all relevant time frames, the time shall be tolled until the applicant files the required documents.

2.17: Regulatory Authority

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